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SENATE BILL 207

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO HEALTH CARE PROVIDERS; ESTABLISHING CRIMINAL HISTORY SCREENING REQUIREMENTS FOR CAREGIVERS; REPEALING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. TITLE. -- Sections 1 through 5 of this act may be cited as the "Caregivers Criminal History Screening Act".

Section 2. PURPOSE. -- The purpose of the Caregivers Criminal History Screening Act and its requirement that caregivers undergo a nationwide criminal history screening is to ensure to the highest degree possible the prevention of abuse, neglect or financial exploitation of care recipients.

Section 3. DEFINITIONS. -- As used in the Caregivers Criminal History Screening Act:

A. "Applicant" means a person who seeks and is

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1 offered employment, contractual service or volunteer service
2 as a caregiver with a care provider.

3 B. "Caregiver" means a person, not otherwise
4 required to undergo a nationwide criminal history screening by
5 the New Mexico Children's and Juvenile Facility Criminal
6 Records Screening Act [32A-15-1 to 32A-15-4 NMSA 1978], whose
7 employment, contractual service or volunteer service with a
8 care provider includes direct care or routine and
9 unsupervised physical or financial access to any care
10 recipient served by that provider;

11 C. "Care provider" or "provider" means a skilled
12 nursing facility; intermediate care facility; care facility
13 for the mentally retarded; psychiatric facility;
14 rehabilitation facility; home health agency; homemaker agency;
15 home for the aged or disabled; group home; adult foster care
16 home; private residence that provides personal care, adult
17 residential care, or nursing care for two or more persons not
18 related by blood or marriage to the facility's operator or
19 owner; adult daycare center; boarding home; adult residential
20 care home; residential service or habilitation service
21 providers authorized to be reimbursed by Medicaid; any
22 licensed or Medicaid certified entity, or any program funded
23 by the state agency on aging, that provides respite, companion
24 or personal care services; however, it does not include
25 general acute care hospitals, and resident care facilities

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1 located at or performing services exclusively for any
2 correctional facility;

3 D. "care recipient" means any person under the
4 care of a provider who has a physical or mental illness,
5 injury or disability or who suffers from any cognitive
6 impairment that restricts or limits the person's activities;

7 E. "Nationwide criminal history screening" means a
8 criminal history background investigation of an applicant or
9 caregiver through the use of fingerprints collected by the New
10 Mexico department of public safety and submitted to the
11 federal bureau of investigation, resulting in generation of a
12 nationwide criminal history record for that applicant or
13 caregiver;

14 F. "Nationwide criminal history record" means
15 information concerning a person's arrests, indictments, or
16 other formal criminal charges, and any dispositions arising
17 therefrom, including convictions, dismissals, acquittals,
18 sentencing, and correctional supervision, collected by
19 criminal justice agencies and stored in the computerized
20 databases of the federal bureau of investigation, the National
21 Law Enforcement Telecommunications System, the New Mexico
22 department of public safety, or the repositories of criminal
23 history information of other states.

24 G. "Volunteer service" means the performance of
25 work for a care provider by a person who is not financially

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1 compensated for that work or who receives a nominal stipend
2 for that work and who assists the care provider by filling a
3 position that would otherwise be held by an employee or
4 independent contractor.

5 Section 3. -- CRIMINAL HISTORY SCREENING REQUIRED;
6 REGULATORY IMPLEMENTATION; APPEALS. --

7 A. The department of health is authorized to
8 receive an applicant's or caregiver's nationwide criminal
9 history record obtained by the New Mexico department of public
10 safety as a result of a nationwide criminal history records
11 screening pursuant to an applicant's or caregiver's
12 authorization for such criminal history records screening.
13 Providers shall submit a set of fingerprints of applicants and
14 caregivers to the New Mexico department of public safety for a
15 nationwide criminal history screening, and the New Mexico
16 department of public safety shall accept such fingerprints for
17 the purpose of conducting a nationwide criminal history
18 screening.

19 B. The department of health is authorized to
20 promulgate regulations to implement this act, including but
21 not limited to regulations establishing a three year phased
22 implementation based upon provider type; fingerprint
23 submission procedures; fees; confidentiality; timeframes for
24 an applicant's or caregiver's nationwide criminal history
25 screening; procedures for clarifying incomplete or confusing

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1 criminal history information; provider sanctions for
2 noncompliance; and employment procedures pending the results
3 of the nationwide criminal history screening relating to
4 volunteers, applicants, and caregivers.

5 C. No caregiver may be employed by a care provider
6 unless the caregiver first has submitted to a request for a
7 nationwide criminal history screening prior to beginning
8 employment in accordance with procedures established by
9 regulation by the departments of health and public safety, or
10 unless the caregiver has submitted to a nationwide criminal
11 history screening and has been cleared within the previous 12
12 months.

13 D. The following felony convictions disqualify an
14 applicant or caregiver from employment as a caregiver:

- 15 (1) homicide;
- 16 (2) trafficking controlled substances;
- 17 (3) kidnapping, false imprisonment,
18 aggravated assault or aggravated battery;
- 19 (4) rape, criminal sexual penetration,
20 criminal sexual contact, incest, indecent exposure, or other
21 related sexual offenses;
- 22 (5) crimes involving adult abuse, neglect or
23 financial exploitation;
- 24 (6) crimes involving child abuse or neglect;

25 E. Upon receipt by the department of health of the

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1 results of the applicant's or caregiver's nationwide criminal
2 history record, the department of health shall give notice to
3 the submitting care provider whether or not the applicant or
4 caregiver has a disqualifying conviction of a crime specified
5 in Subsection D of this section. No other results of the
6 applicant's or caregiver's criminal history records screening
7 shall be provided to the care provider. Except as provided in
8 Subsection F of this section, a care provider shall not employ
9 an applicant, or continue to employ a caregiver, whose
10 criminal history screening records reflect a disqualifying
11 conviction. When the department of health provides notice to
12 the care provider of a disqualifying conviction of a crime
13 specified in Subsection D of this section, it shall also
14 notify the applicant or caregiver, stating with specificity
15 the convictions and arrests on which its decision is based and
16 identifying the agency which provided the records.

17 F. An applicant or caregiver whose nationwide
18 criminal history record, obtained through the applicant's or
19 caregiver's criminal history records screening and other
20 clarifying endeavors of the department of health, reflects a
21 disqualifying conviction of a crime specified in Subsection D
22 of this section may request from the agency on aging an
23 administrative reconsideration. The care provider may, in its
24 discretion, continue to employ such person during the pendency
25 of the reconsideration. A care provider may employ the

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1 applicant or caregiver if the reconsideration proceeding
2 results in a determination by the agency on aging that the
3 applicant's or caregiver's nationwide criminal history record
4 inaccurately reflects a disqualifying conviction of a crime
5 specified in Subsection D of this section, or that the
6 employment presents no risk of harm to a care recipient, or
7 that the conviction does not directly bear upon the
8 applicant's or caregiver's fitness for the employment.

9 G. The agency on aging is authorized to adopt
10 regulations for the administrative reconsideration proceeding
11 available to any applicant or caregiver whose nationwide
12 criminal history record reflects a disqualifying conviction.
13 The regulations shall take into account the requirements of
14 the Criminal Offender Employment Act, 28-2-1 to 28-2-6, NMSA
15 1978.

16 H. A care provider shall maintain records
17 evidencing compliance with the requirements of this section
18 with respect to all applicants and caregivers employed on or
19 after the effective date of this act.

20 I. All criminal history records obtained pursuant
21 to this section by the department of health and the agency on
22 aging are confidential. No criminal history records obtained
23 pursuant to this section shall be used for any purpose other
24 than determining whether an applicant or caregiver has
25 criminal records that disqualify him from employment as a

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1 caregiver. Except on court order or with the written consent
2 of the applicant or caregiver, criminal records obtained
3 pursuant to this section and the information contained therein
4 shall not be released or otherwise disclosed to any other
5 person or agency. Any person who discloses confidential
6 records or information in violation of this section is guilty
7 of a misdemeanor and shall be sentenced pursuant to the
8 provisions of Subsection A of Section 31-19-1 NMSA 1978.

9 J. A care provider, including its administrators
10 and employees, is not civilly liable to an applicant or a
11 caregiver for a good faith decision to employ, not employ or
12 terminate employment pursuant to this act.

13 K. Failure to comply with the requirements of this
14 section are grounds for the state agency having enforcement
15 authority with respect to the care provider to impose
16 appropriate administrative sanctions and penalties.

17 Section 4. -- CONSTRUCTION; SEVERABILITY. -- If any provision
18 of the Caregivers Criminal History Screening Act or the
19 application thereof to any person or entity or in any
20 circumstances is held invalid, the remainder of that act and
21 the application of such provision to others or in other
22 circumstances shall not be affected thereby.

23 Section 5. -- REPEAL. -- Section 29-17-1 NMSA 1978 (being
24 Laws 1997, Chapter 202) is repealed.

25 Section 6. -- APPROPRIATION. -- For fiscal year 1999, two

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1 hundred seventy five thousand dollars (\$275,000) is
2 appropriated to the department of health, two hundred twenty
3 five thousand (\$225,000) is appropriated to the department of
4 public safety, and sixty thousand dollars (\$60,000) is
5 appropriated to the agency on aging from the general fund for
6 the purpose of implementing the provisions of Caregivers
7 Criminal History Screening Act.

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 31, 1998
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8 Mr. President:
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10 Your COMMITTEES' COMMITTEE, to whom has been referred
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12 SENATE BILL 207
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14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 JUDICIARY COMMITTEE.
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19 Respectfully submitted,
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Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

S0207CC1

FORTY-THIRD LEGISLATURE

SB 207/a

SECOND SESSION, 1998

February 6, 1998

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 207

has had it under consideration and reports same with recommendation
that it DO PASS, amended as follows:

1. On page 6, line 15 strike "and arrests".,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Tsosie

Absent: None

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FORTY-THIRD LEGISLATURE

SB 207/a

SECOND SESSION, 1998

February 13, 1998

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 207, as amended

has had it under consideration and reports same with recommendation
that it DO PASS, amended as follows:

1. On page 2, line 1, strike the comma and insert "or" and
strike "or volunteer service".

2. On page 2, line 22, strike "or any program" and insert in
lieu thereof "programs".

3. On page 2, line 24, strike the semicolon and insert ", or
programs funded by the children, youth and families department that

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SFC/SB 207

Page 15

provide homemaker or adult daycare services;".

4. On page 3, line 24, through page 4, line 4, strike Subsection G in its entirety.

5. On page 6, line 22, strike "agency on aging" and insert in lieu thereof "department of health".

6. On page 7, line 9, strike "agency on aging" and insert in lieu thereof "department of health".

7. On page 7, lines 21 and 22, strike "and the agency on aging".

8. On page 8, between lines 8 and 9, insert a new Subsection J to read:

"J. The department of health shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers. An applicant's arrest record information shall not be released except upon request of the applicant, as provided in the Arrest Record Information Act."

. 120590. 3GJai

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SFC/SB 207

Page 16

9. Reletter succeeding subsections accordingly.

10. On pages 8 through 9, strike Section 6 in its entirety.

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SFC/SB 207

Page 17

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Campos, Carraro, Eisenstadt, Romero

Absent: None

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. 120590. 3GJai

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 18, 1998
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
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12 SENATE BILL 207, as amended
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,
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21 _____
22 Thomas P. Foy, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 19

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

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7 Date _____

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9 The roll call vote was 7 For 0 Against

10 Yes: 7

11 Excused: Alwin, Luna, Mallory, Rios, Sanchez, Stewart

12 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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5 February 18, 1998
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7 Mr. Speaker:
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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom has
10 been referred

11 SENATE BILL 207, as amended
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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
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16 Respectfully submitted,
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21 Max Coll, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Senate Bill 207, as amended

Page 21

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

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7 Date _____

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9 The roll call vote was 17 For 0 Against

10 Yes: 17

11 No: None

12 Excused: Wallace

13 Absent: None

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